

NOTE: This guidance supersedes OSWER Directive # 9834.17 entitled "Guidance on CERCLA Settlements with De Micromis Waste Contributors" and dated 7/30/93.

June 3, 1996

MEMORANDUM

SUBJECT: Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors

FROM: Jerry Clifford, Director /s/
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency

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TO: Regional Counsel, Regions I - X
Director, Office of Site Remediation and Restoration,
Region I
Director, Emergency and Remedial Response Division,
Region II
Director, Hazardous Waste Management Division, Regions
III, IX
Director, Waste Management Division, Region IV
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This memorandum transmits the "Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors." The revised guidance supersedes EPA's "Guidance on CERCLA Settlements with De Micromis Waste Contributors," issued on July 30, 1993. It consists of a memorandum and seven attachments which are designed to provide guidance on using CERCLA's settlement authorities to resolve the liability of potentially

responsible parties ("PRPs") who have contributed even less hazardous substances to a site than the traditional de minimis party.

As stated in the 1993 guidance, de micromis settlements are simply a subset of de minimis settlements and are entered under the de minimis contributor settlement authority of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. Section 9622(g)(1)(A). De micromis settlements may be available to parties who generated or transported a minuscule amount of waste to a Superfund site, an amount less than the minimal amount normally contributed by de minimis waste contributors. De micromis settlements are not available to owners or operators of Superfund sites. This guidance document is not intended to affect ongoing de minimis settlement negotiations.

SUMMARY OF MAJOR CHANGES MADE BY REVISED GUIDANCE

As announced in EPA's Administrative Reform initiative of October 1995, the revised guidance makes three important changes to EPA's 1993 de micromis policy. First, the 1993 guidance provided as examples two volumetric cut-offs for eligibility for a de micromis settlement: 0.001% of total volume for hazardous substance contributors; and 0.1% for municipal solid waste (MSW) contributors. The revised guidance endorses eligibility cut-off levels that double the levels identified in the 1993 guidance (0.002% for hazardous substance contributors and 0.2% for MSW contributors). Moreover, where the Region determines that site-specific factors warrant the use of an absolute volume cut-off for hazardous substance contributors, the guidance endorses the use of an eligibility cut-off at 110 gallons (such as two 55-gallon drums) or 200 pounds.

Second, the 1993 guidance recommended that the Regions determine de micromis settlement payments using a "matrix approach" that considers both individual volumetric contribution and total site costs. Reflecting EPA's policy that de micromis parties, who have contributed only a minuscule amount of waste to the site, should not participate in financing the cleanup, the revised guidance recommends that de micromis settlements be effected without any exchange of money. (Although the Administrative Reform initiative referred to "one-dollar de micromis settlements," for purposes of administrative efficiency and resource savings, the revised guidance does not recommend collecting the \$1.00 payment.)

Third, the revised guidance clarifies that de micromis settlements should only be considered when the Region finds that minuscule contributors are being pursued by other PRPs at the site. Specifically, the revised guidance recommends that the Region offer a de micromis

settlement to qualifying parties only if such parties: (1) have been sued by other PRPs at the site; (2) face the concrete threat of litigation by other PRPs at the site; or (3) have approached EPA seeking settlement, and the Region has determined that such parties have a reasonable expectation of facing contribution litigation.

DESCRIPTION OF ATTACHMENTS

In addition to the guidance memorandum itself, the revised guidance includes seven attachments:

- (1) An informational brochure entitled "Superfund and Small Volume Waste Contributors: De Micromis Settlements"
- (2) Sample Cover Letter for De Micromis Questionnaire
- (3) Model De Micromis Questionnaire
- (4) Sample Cover Letter for De Micromis Settlement
- (5) Model CERCLA Section 122(g)(4) De Micromis Administrative Order on Consent (AOC)
- (6) Model CERCLA Section 122(g)(4) De Micromis Consent Decree (CD)
- (7) Model CERCLA Section 122(i) De Micromis Federal Register Notice

The attachments are designed to increase the speed and efficiency of the de micromis settlement process by establishing regular and routine settlement practices. Attachment 1 is an informational brochure that provides introductory information for potential settlers about the Superfund program and de micromis settlements. Attachment 2 is a sample cover letter to be used with the third attachment, the de micromis questionnaire. The cover letter introduces the recipient to the Superfund program, the site and the concept of de micromis settlements, and invites the recipient to fill out the questionnaire. Attachment 3, the questionnaire, is designed to assist EPA staff in determining which parties are eligible for de micromis settlements. It is a form to be filled out by potential de micromis settlers which contains a series of questions about the potential settlor's waste and its involvement with the site.

Attachment 4 is a sample cover letter to accompany the de micromis settlement when it is sent out for signature by the settling party. Attachment 5, the de micromis AOC, provides model settlement language for administrative resolution of a de micromis party's liability. Attachment 6, the de micromis CD provides model settlement language for the judicial resolution of a de micromis party's liability. In general, EPA and DOJ prefer resolution by AOC because administrative settlements

usually are quicker and less expensive than judicial settlements. Typically, the CD would be used when the settling de micromis party has been named as a defendant in a contribution action or when the United States has already initiated CERCLA litigation at the site.

The AOC and CD are brief in length, are written in plain English, and are designed to be self-explanatory and non-threatening to the potential settlor. We encourage our staff to use them as guidance when drafting settlements and to adhere as closely as possible to their terms. Once the appropriate model has been tailored to the facts and circumstances of the case it should not be subject to negotiation with the settling parties. This will ensure that de micromis settlements will be completed quickly, will contain nationally-consistent terms, will receive expeditious management review and approval at EPA and DOJ, and will be accomplished with the expenditure of fewer resources to settling parties and to the Government than would be necessary for a negotiated settlement.

The seventh and final attachment is a model Federal Register notice. It is for use by EPA staff when providing the public notice and opportunity to comment on administrative de micromis settlements required by Section 122(I) of CERCLA, 42 U.S.C. Section 6922(I). (The Department of Justice will use a similar Federal Register notice for de micromis CDS.)

This guidance was developed with the assistance of workgroup members from Headquarters, the Regions, and the Department of Justice, and we would like to thank all workgroup members for their contribution to this project.

If you have any questions about the revised guidance, please contact Susan Boushell of the Program and Policy Evaluation Division of OSRE at (202) 564-5107 or Tom Mariani of the Environmental Enforcement Section (EES) at (202) 514-4620. If you have any questions about the attached models, please contact Janice Linett of the Regional Support Division in OSRE at (202) 564-5131 or Tom Mariani of EES.

For EPA staff, the guidance and attachments are available electronically in the Superfund Enforcement Infobase by accessing Agency LAN Services/Information Services. For DOJ staff, the guidance and the model AOC, CD, and questionnaire are available electronically on the Section's work product directory: N:\NET\SS52\UDD\EESINDEX\CERMODEL.

Attachments (7)

cc: Lawrence E. Starfield, Associate General Counsel,
Solid Waste and Emergency Response Division
Stephen D. Luftig, Director, Office of Emergency and Remedial
Response
Joel S. Gross, Chief, Environmental Enforcement Section
Letitia Grishaw, Chief, Environmental Defense Section
Regional Counsel Branch Chiefs, Regions I - X (with disk
containing attachments 2-7)
Regional Waste Management Branch Chiefs, Regions I - X

----- ATTACHMENT -----

REVISED GUIDANCE ON CERCLA
SETTLEMENTS WITH DE MICROMIS WASTE CONTRIBUTORS

I. Background and Purpose

EPA strongly supports efforts to resolve quickly and fairly the liability of small volume waste generators and transporters. (See footnote 1 below) The Agency has published several guidance documents to assist the Regions in resolving the liability of these contributors using the provisions of Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9622(g). (See footnote 2 below) This guidance document is focused specifically on EPA's use of CERCLA settlement authorities to resolve the liability of "de micromis" parties who may be sued in contribution by other parties at the site. As described in more detail below, a de micromis party is typically one that contributed either: (a) a minuscule quantity of hazardous substances to a site (even less than a typical de minimis party); (b) a small quantity of municipal solid waste (MSW) or industrial trash; (See footnote 3 below.) or possibly (c) both.

===== Foot Note =====

1 Performed under the authority of CERCLA Section 122(g)(1)(A), de micromis settlements are available only to parties who may be liable as generators or transporters (under Section 107(a)(3) or Section 107(a)(4), respectively), and not to parties whose liability derives from ownership or operation of a facility.

2 This guidance document supersedes EPA's existing guidance on de micromis settlements: "Guidance on CERCLA Settlements with De Micromis Waste Contributors" (White/Diamond, July 30, 1993). However, this document supplements existing guidance regarding de minimis settlements insofar as they may apply to de micromis settlements. See, e.g., "Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)" (Diamond/White, July 30, 1993) (OSWER Directive #9834.7-1D); "Methodology for Early De Minimis Waste Contributor Settlements under CERCLA Section 122(g)(1)(A)" (Diamond/White, June 2, 1992) (OSWER Directive #9834.7-1C); "Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements" (Diamond/Unterberger, December 20, 1989) (OSWER Directive #9834.7-1B); "Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA," (Adams/Porter, June 19, 1987) published at 52 Fed. Reg. 24333 (June 30, 1987).

3 For definition of the terms "municipal solid waste" and "industrial trash," as they are used in this guidance, Regions should refer to the "Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Waste" (Clay, Dec. 6, 1989) (OSWER Dir. # 9834.13), at 4-6, published at 54 Fed. Reg. 51071 (Dec. 12, 1989).

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There are various situations in which EPA may best serve the public interest by exercising its enforcement discretion and offering a de micromis settlement to eligible parties. This guidance explains how to use EPA's existing settlement authority in an expeditious manner to resolve the liability of de micromis parties so they may receive the full extent of contribution protection available under the statute.

To provide further assistance, attached are several additional documents: an informational brochure entitled "Small Volume Waste Contributors: De Micromis Settlements" (attachment 1); a sample cover letter to accompany the De Micromis Questionnaire (attachment 2); a model De Micromis Questionnaire (attachment 3); a sample cover letter to accompany the De Micromis Settlement (attachment 4); a model CERCLA Section 122(g)(4) De Micromis Administrative Order on Consent (attachment 5); a model CERCLA Section 122(g)(4) De Micromis Consent Decree

(attachment 6); and a model CERCLA Section 122(i) De Micromis Federal Register Notice (attachment 7).

II. Policy Discussion

Under Section 122(g) of CERCLA, EPA has the authority to enter into settlements at any point in the cleanup process with persons who may have contributed minuscule amounts of hazardous substances. EPA has determined that de minimis settlements are in the public interest because they simplify cases, reduce the transaction costs of both de minimis and non-de minimis parties, and provide greater certainty to the de minimis parties who are able to resolve their liability at a site. In addition, for many de minimis parties, the cost of legal representation, absent early settlement, may exceed those parties' proportional share of responsibility. For these reasons, EPA has redoubled its efforts to resolve the liability of small volume waste contributors.

These efforts are not enough, however, for those parties whose contributions are so small that their shares of responsibility are in effect zero. For these de micromis parties, the administrative costs of determining and verifying the party's share, if any, and the cost of collecting the small payment required through a de minimis settlement could far exceed that share. Therefore, as a matter of national policy, EPA intends to use its authority where appropriate to review and resolve the potential liability of de micromis parties without incurring such costs. This settlement guidance is designed to provide assistance to Regional personnel at sites where the Agency determines that a de micromis settlement may be in the public interest.

A de micromis settlement may be appropriate for many types of parties, including homeowners, small businesses, or other entities whose activities resulted in the generation or disposal of only an insignificant amount of hazardous substances. A de micromis settlement may also be appropriate for federal agencies or industrial/commercial entities if their contribution to the site meets the de micromis eligibility test established for a particular Superfund site. De micromis contributor settlements are not available to owners or operators of Superfund sites. (See footnote 4 below.)

===== Foot Note =====

4 See supra note 1.

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EPA's regional offices have discretion to decide whether and when to offer a de minimis settlement. In general, the Region should only offer a de minimis settlement to qualifying (or potentially qualifying) parties if one of the following conditions is met: (1) such parties have been sued by other PRPs at the site; (2) such parties face the concrete threat of litigation from other PRPs at the site; or (3) such parties have approached EPA seeking a settlement, and the Region has determined that such parties have a reasonable expectation of facing contribution litigation.

In some cases, EPA may obtain advance notice of this type of third-party litigation. For example, the defendants in a CERCLA action brought by the United States may move to join potentially de minimis parties to a pending enforcement action, or signatories to a consent decree may notify EPA of contribution suits they initiate (as required by paragraph 93 of the Final Revised Model CERCLA RD/RA Consent Decree (Herman/Schiffer, July 13, 1995), published at 60 Fed. Reg. 38817 (July 28, 1995)). In such cases, it may be appropriate for the Region to consider the feasibility of a de minimis settlement.

However, if there are de minimis parties at a site who are not being pursued by other PRPs, EPA should not offer a de minimis settlement. De minimis parties are, by definition, parties that EPA believes should not be pursued or otherwise compelled to expend transaction costs to resolve potential Superfund liability. Even reading, understanding, and responding to a de minimis settlement offer made by the United States may cost a de minimis party legal fees or cause them to incur other financial burdens. For this reason, EPA should not extend a settlement offer to parties who are under no threat of suit and incurring no transaction costs in connection with the site.

This guidance is not intended to affect ongoing de minimis settlement negotiations. Indeed, the Regions are encouraged to conduct de minimis settlements where they have determined that small volume contributors at the site should share the costs of response and would benefit from an expedited settlement. If the Region is in the process of conducting a de minimis settlement at the site, it may, in its discretion, choose to establish both a de minimis and a de minimis class within the known small volume waste contributors at the site. A distinction between de minimis

and de micromis parties may be appropriate, for example, if de micromis parties are known to EPA but would not normally be pursued by EPA for response costs -- either because of the type of waste contributed (e.g., MSW) or the very low volume contributed. Unlike traditional de minimis settlements, the Region should use its discretion to offer de micromis settlements only where they would be helpful to the parties involved; it should not, typically, offer such settlements where qualifying parties would suffer no detriment in the absence of EPA's assistance. Finally, even if small contributors at a site are parties to (or have been threatened with) contribution litigation, the Region has discretion, under appropriate circumstances, to decline to offer de micromis settlements.

III. Settlement Authority

A. Section 122(g)

CERCLA Section 122(g)(1)(A) provides discretionary authority to enter into administrative and judicial de minimis settlements with certain contributors of hazardous substances. To qualify for a de minimis settlement under Section 122(g)(1)(A), the settling party's contribution of hazardous substances must be minimal in its amount and toxicity in comparison to other hazardous substances at the facility (as described under "Eligibility" below). In addition, the statute requires that each party's settlement involve only a minor portion of the total response costs. Finally, the settlement must be practicable and in the public interest.

A de micromis settlement is a type of de minimis settlement authorized by Section 122(g) of CERCLA. As in the standard de minimis settlement, a de micromis settlement will contain an immediately effective covenant not to sue for past and future liability at the specific facility under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973. (See footnote 5 below.) In addition, a Section 122(g) de micromis settlement provides contribution protection as set forth in Sections 113(f) and 122(g)(5) of CERCLA.

===== Foot Note =====

5 The present and future liability concepts are explained in the interim guidance entitled "Covenants Not to Sue Under SARA" (Adams/Porter, July 10, 1987), published at 52 Fed.

Reg. 28038 (July 27, 1987).

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B. Deciding Whether to Pursue an Administrative or Judicial Settlement

When a Region decides to enter into a de micromis settlement, the circumstances surrounding that decision will dictate whether to settle administratively or judicially under Section 122(g). Typically, a judicial consent decree should be used if the settling party has already been named as a defendant in a contribution action or if the United States has already initiated a CERCLA judicial action with respect to other parties at the site. In other situations, EPA prefers an administrative settlement because it usually can be accomplished more quickly and inexpensively than a judicial settlement. (See footnote 6 below.)

===== Foot Note =====

6 The contribution protection provided through an administrative Section 122(g) settlement has been upheld against challenge. See *Dravo v. Zuber*, 13 F.3d 1222 (8th Cir. 1994) (finding contribution protection effective even though administrative settlement under Section 122(g) not final at time contribution action commenced); *Waste Management of Pennsylvania v. City of York*, 910 F. Supp. 1035, 1041 (M.D. Pa. 1995) (noting that settlements under Section 122(g) are final, and thus convey complete contribution protection).

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IV. De Micromis Settlement Procedures

A. Eligibility

De micromis settlements are a subset of de minimis contributor settlements under CERCLA section 122(g), and are intended to encompass only the parties who contributed minuscule amounts of hazardous substances to a site, including parties who sent only MSW or industrial trash to the site. Therefore, in considering whether parties are eligible for de micromis settlements, the Region must first be able to make the findings required by Section 122(g) for a de minimis settlement with respect to those parties: (1) that the amount of hazardous substances contributed is minimal in comparison to the other

hazardous substances at the site; (2) that the toxic or other hazardous effects of the substances contributed are minimal in comparison to the other hazardous substances at the site; and (3) that the settlement is practicable and in the public interest and involves only a minor portion of the response costs at the site. Next, the Region should establish a volumetric cut-off, above which no party could qualify for a de micromis settlement. Parties above this cutoff may still qualify for a de minimis settlement, but not a de micromis settlement. In relative terms, to qualify for a de micromis settlement, the party's waste contribution must be smaller than "minor" -- it must be minuscule.

The Region should consider several factors in determining the de micromis eligibility cut-off. For example, the Region should consider the settlor's contribution of hazardous substances in relation to the total volume of waste at the site, the toxic or other hazardous effects of such hazardous substances, and the effect of the de micromis settlement on the remaining parties at the site. Below are a few examples of how a de micromis cutoff might be established at different types of sites. Of course, these examples are illustrative only; there may be sites at which the eligibility criteria suggested in these examples would be too high or too low, or at which it may be inappropriate to offer a de micromis settlement at all. Similarly, there may be other types of sites where a de micromis settlement might be appropriate. Furthermore, disposal of minuscule amounts of hazardous substances does not automatically make a party eligible for a de micromis settlement. The Region should evaluate site-specific factors in determining whether a de micromis settlement is appropriate in a given situation. (See footnote 7 below.)

===== Foot Note =====

7 A de micromis settlement may be appropriate even where the Agency is considering performing a non-binding allocation of responsibility (NBAR) or adopting a private party allocation at the site. Offering a de micromis settlement to qualifying parties, rather than including such parties in an allocation process, is consistent with EPA's view that de micromis parties should not be required to participate in financing or performing the cleanup.

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1. Sites containing wastes of similar toxicity

As mentioned above, to satisfy the statutory (Section 122(g)(1)(A)) requirement for a de minimis or de micromis settlement, the toxic or other hazardous effects of an eligible party's substances must be minimal in comparison to the other hazardous substances at the facility. At a site where the wastes are found to be essentially similar in toxicity (such as at a battery cracking, waste oil recycling, or scrap metal facility), a de micromis settlement may be appropriate with parties who contributed only a minuscule amount. In such cases, the Region could establish a cut-off for de micromis eligibility based simply on the volumetric waste contribution (e.g., the percentage of the number of batteries or gallons of waste oil sent by a party as compared to the total number of batteries or gallons of waste oil at the site). Given the nature of wastes at these sites and their similar toxicities, a typical de micromis cutoff might be 0.002% of the total volume of waste at the site, or 110 gallons (such as two 55-gallon drums) or 200 pounds of materials containing hazardous substances, whichever is greater.

Of course, the Region may vary this cutoff in accordance with site-specific factors. For example, at a small site, a 110-gallon contributor may actually be responsible for 1% (or even 5%) of the total waste at the site. In such a case, the Region might determine that the 110-gallon contributor is eligible for a de minimis settlement, or perhaps not eligible for an expedited settlement at all. Furthermore, where the Region has extensive volumetric information, a natural break in the data might justify a slightly higher or lower de micromis cutoff. Regardless of the percentage of waste contributed, however, where the toxic or other hazardous effects of the 110-gallon contributor's waste is not "minimal in comparison to the other hazardous substances at the facility," a CERCLA Section 122(g) settlement is not appropriate.

2. Co-disposal landfills containing wastes of varying toxicity

Co-disposal landfills are typically sites that received MSW, industrial trash, or municipal sewage sludge (MSS) (See footnote 8 below.) as well as hazardous substances derived from a commercial, institutional, or industrial process or activity. Although the waste at these landfills varies in toxicity, the MSW and industrial trash contributions are generally of high volume and low toxicity. Based on the significantly lower toxicity of MSW and industrial trash as compared to industrial hazardous

substances, it is appropriate for a Region to consider a higher volumetric cut-off for de micromis eligibility for parties contributing such wastes. Accordingly:

(a) If a potential de micromis party contributed solely MSW or industrial trash, the Region should consider a de micromis settlement to a PRP whose contribution did not exceed 0.2% of the total waste at the site. (See footnote 9 below.) The Region should also take site-specific factors into account when establishing this volumetric cut-off. In order to qualify for a de micromis settlement under these criteria, parties must certify that their contribution to the site was solely MSW or industrial trash.

===== Foot Note =====

8 See "Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes," supra note 3 at 4-6, for general definitions of the terms "municipal solid waste," "industrial trash," and "municipal sewage sludge."

9 Generators of MSS sometimes seek settlement under CERCLA Section 122(g)(4). EPA explained in 1989 that, as with MSW and industrial trash contributors, the Agency typically would not pursue contributors of MSS unless site-specific evidence indicated that such contributions contained hazardous substances derived from a commercial, institutional, or industrial process or activity. See "Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Waste," supra note 3 at 12. However, to offer a de micromis settlement to an MSS contributor -- and thus give covenants and contribution protection -- goes beyond the Agency's decision to refrain from enforcement. Wastes containing widely varying concentrations or amounts of hazardous substances may well be called MSS, distinguishing this category somewhat from MSW or industrial trash. Nevertheless, where a Region concludes that the MSS contributed by a PRP to a particular site is essentially the same as MSW, the Region may elect to treat such MSS like MSW for purposes of determining whether that PRP qualifies for a de micromis settlement. For a Region to conclude that any particular MSS is essentially the same as MSW, the case-specific facts must show that the MSS in question did not contain any greater concentration or amount of hazardous substances than typically found in MSW.

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(b) If a potential de micromis party contributed solely hazardous substances derived from a commercial, institutional, or industrial process or activity, the Region should consider utilizing an eligibility cutoff for such party as described in Section IV.A.1 above (i.e., 0.002% of the total volume of waste containing hazardous substances at the site or 110 gallons/200 pounds of materials containing hazardous substances).

(c) If a potential de micromis party contributed both (1) MSW or industrial trash and (2) hazardous substances derived from a commercial, institutional, or industrial process or activity (e.g., MSW mixed with trace amounts of industrial hazardous substances that are distinct from ordinary household hazardous waste), the Region should consider some combination of the cutoffs described above in (1) (i.e., 0.002% for wastes of similar toxicity) and (2)(a) (i.e., 0.2% for MSW). (See footnote 10 below.)

===== Foot Note =====

10 The Agency has developed these eligibility cutoffs because parties responsible for even minuscule waste contributions may be statutorily liable under CERCLA. These eligibility cutoffs are intended only to inform the Regions' exercise of discretion in deciding whether to settle with such minuscule contributors.

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B. Site-specific Information

The Region should evaluate the following site information before pursuing a de micromis settlement (assuming one or more of the circumstances described in II above is present): (1) information regarding hazardous substances sent to the site by the de micromis party, and (2) the total estimate of waste at the site.

The Region may use a variety of site-specific information to determine a party's eligibility for a de micromis settlement. Sources of this type of information include: state records, manifests, site records, canceled checks, interviews, waste-in lists, other allocation documents, or Section 104(e) information request responses. The Region does not have to produce a waste-in list, even if the information is available, if the Region has information in its possession to determine that the potential settlor is a de micromis party. However, the Region should use a

prepared waste-in list if it is available. As described below, the Region should use a questionnaire to assess the nature and quantity of wastes contributed by each potential de micromis party to determine eligibility. (See footnote 11 below.) In some cases, where the Region already has sufficient information about each party's contribution, the questionnaire may be replaced with a more simplified self-certification that may, in some cases, be simply included in the settlement document.

===== Foot Note =====

11 The model De Micromis Questionnaire (attachment 3) includes a certification by the potential settlor that it has made a thorough search for documents and information relating to its involvement with the site and has accurately and completely filled out the questionnaire.

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C. Contacting De Micromis Settlers

As mentioned above, EPA's regional offices have discretion to decide whether and when to offer a de micromis settlement. In general, the Region should only offer a de micromis settlement if there are contributors of minuscule volumes of waste at the site that have either: (1) been sued by other PRPs at the site, (2) been threatened with suit by other PRPs at the site; or (3) approached EPA seeking a settlement and EPA believes they may reasonably expect to soon face contribution demands by other PRPs. As previously discussed, if there are de micromis parties at a site who do not meet this test, EPA should not offer them a de micromis settlement.

Where EPA determines it is appropriate to offer a de micromis settlement, the Region should be particularly sensitive when it contacts and communicates with potential de micromis parties. Such parties may not be familiar with the Superfund process. Indeed, they may see no practical difference between a demand letter from a settling PRP and a letter from the government containing a de micromis settlement offer. The potential de micromis settlor may be unaware of the possibilities of contribution litigation and any benefits such a person would receive by settling with the government, such as contribution protection and reduced transaction costs. Therefore, the site case team should formulate a communication strategy before the settlement offer is sent to the de micromis parties.

Such a strategy will aid in communicating EPA's actions to public officials, potential de micromis parties, and other PRPs at the site. Effective communication increases fairness, could reduce later settlement challenges, and may identify issues or additional information that should be considered in the settlement offer. After consideration of the number of parties and site-specific circumstances, it may be appropriate for the case team to discuss the settlement strategy with EPA's congressional affairs representatives and community relations personnel. The case team should develop a communication strategy which states that the parties are being sent a preemptive settlement offer rather than a threat of enforcement action and explains how the settlement will benefit the de micromis party. The communication strategy should also state that the federal government does not intend to pursue bona fide de micromis parties who decide not to enter into a settlement. EPA's congressional affairs representatives should be given a copy of the draft settlement offer letter where legislators may have an interest. Finally, in appropriate circumstances, the case team should consider offering a briefing to local, state, and federal elected officials early in the settlement process.

Attached are several documents to assist in preliminary communications with potential de micromis parties: (1) a brochure describing the basic facts of de micromis settlements (attachment 1); (2) a model preliminary letter to be attached to the questionnaire and certification (attachment 2); and (3) a model follow-up letter confirming the party's eligibility for a de micromis settlement (attachment 4). These are written in plain English, emphasize the voluntary nature of de micromis settlements, and inform the recipient that de micromis settlement terms are non-negotiable to reduce transaction costs and administrative expenses.

D. Notification of EPA Headquarters, Department of Justice and Federal Trustees

In accordance with current delegations, the Region must consult with the Director of the Regional Support Division in the Office of Site Remediation Enforcement at Headquarters when planning the Region's first de micromis settlement. Subsequent de micromis settlements do not require Headquarter's consultation. A de micromis settlement does not require the concurrence of Headquarter's Office of Enforcement and Compliance Assurance unless it "significantly deviates from written Agency

policy" or "breaks new ground in an important, sensitive area." (See footnote 12 below.) In addition, the Department of Justice (DOJ) must approve all administrative de micromis settlements where total site costs are expected to exceed \$500,000 and all de micromis consent decrees.

If the settlement requires DOJ approval, the Region should consult with DOJ as early in the process as possible, and keep the Department apprised of progress toward settlement and any significant departures from this guidance or its attachments. Within 30 days of receiving the Region's referral of the proposed settlement, DOJ will advise the Region whether the settlement is approved. For administrative settlements, the settlement will be deemed approved if DOJ does not reject a proposed de micromis settlement within the 30-day period, unless there has been an agreement to enlarge this time period between the appropriate Assistant Section Chief from DOJ's Environmental Enforcement Section and EPA's Regional Counsel (or other appropriate regional official).

===== Foot Note =====

12 See "Office of Enforcement Compliance and Assurance and Regional Roles in Civil Judicial and Administrative Site Remediation Enforcement Cases" (Herman, May 19, 1995) at page 2 of the attachment.

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The federal natural resource trustees have agreed to waive the natural resource damage claim against de micromis settlors whose monetary consideration is \$1.00 or less, subject to a right to withdraw that consent in a given case. For this reason, the Region should notify the trustees as early in the process as possible after it has decided to develop a de micromis settlement offer. For both administrative and judicial settlements, the Region must give potentially interested federal trustees 30 days to review a proposed settlement prior to EPA's signing it. The 30 days may run concurrently with the period given to the de micromis parties to review and sign the proposed settlement. Unless a trustee objects within the 30-day period (or an enlarged time period agreed to by the Region and the trustee), the trustee's generic waiver of natural resource claims applies.

E. Public Comment Requirements

The Region must publish notice of all administrative de

micromis settlements in the Federal Register for no fewer than 30 days, pursuant to Section 122(i) of CERCLA. Although the Regional Administrator may sign the settlement either before or after this public comment period, DOJ approval must be complete before the Federal Register notice is published by the Region. DOJ will lodge judicial de micromis settlements with the court and provide no fewer than 30 days for public notice and comment.

V. De Micromis Settlement Provisions

The terms of a de micromis settlement are set forth in the Model CERCLA Section 122(g)(4) De Micromis Administrative Order on Consent (AOC) (attachment 5) and the Model CERCLA Section 122(g)(4) De Micromis Consent Decree (CD) (attachment 6). The main provisions of these model documents are described below.

A. Resolution of Liability

De micromis settlements under CERCLA Section 122(g) (administrative or judicial) will address a party's potential liability under Sections 106 and 107 of CERCLA and Section 7003 of RCRA and provide the settlor with an immediately effective covenant not to sue for past and future liability at the site. EPA intends de micromis settlements to be a final resolution of the de micromis party's potential liability, save for a few relatively narrow reservations which are described under (B) below.

B. Reservations of Rights

A de micromis settlement under Section 122(g) should generally contain a reservation of rights for the following situations: (1) EPA obtains new information showing that the settlor no longer qualifies for a de micromis settlement under the criteria established for the site (e.g., the waste contributed was of a greater volume or toxicity than the de micromis threshold); and (2) after signature of the De Micromis Questionnaire, the settlor becomes an owner or operator of the site or undertakes any activity with respect to a hazardous substance or solid waste at the site. Further, all de micromis settlement agreements should state that the settlement has no effect on the Agency's ability to pursue non-settling parties.

C. Contribution Protection

The de micromis settlement should contain language that the settlor receives protection against contribution actions to the full extent provided in CERCLA Sections 113(f) and 122(g)(5). As reflected in the model De Micromis CD and AOC, this contribution protection applies to all matters addressed in the settlement, defined as "all response actions taken and to be taken and all response costs incurred and to be incurred, in connection with the Site, by the United States or by any person who is a potentially responsible party under CERCLA at the Site." The "matters addressed" do not include those response actions and those response costs for which liability is reserved in the United States' reservation of rights.

D. Obligations of the Settling Party

This guidance establishes a change in EPA's approach to establishing settlement values for de micromis offers. Consistent with the model administrative order and consent decree, the Regions should generally not require any monetary payment as part of a de micromis settlement. This approach reflects EPA's position that it would be inequitable to require de micromis parties to participate in financing or performing cleanup at the site because their liability is negligible at most. Moreover, because a de micromis party's actual connection to the site is so small, the administrative costs of executing a de micromis settlement, combined with the private party's associated transaction costs will likely equal or exceed the de micromis party's proportional share of response costs at the site, if any. Given this inequity, it is fair, and thus in the public interest, to conclude zero-dollar de micromis settlements with qualifying parties.

In exchange for the United States' broad covenant not to sue and receipt of full contribution protection, the settlor certifies that it has responded fully and accurately to the De Micromis Questionnaire (and any other EPA requests for information regarding the site). Moreover, the settlor agrees not to assert any claims against the United States or its contractors or employees with respect to the site or the settlement. Further, the settlor is required to waive all claims regarding the site against any other person who may be a potentially responsible party at the site. Where multiple settlors are involved, each settlor also waives its claims regarding the site against every other settlor.

VI. Purpose and Use of this Guidance

This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Environmental Protection Agency and the U.S. Department of Justice. This guidance is not a rule and does not create any legal obligations. Whether and how EPA applies the guidance to any particular site will depend on the facts at the site.

VII. Further Information

For further information concerning this guidance, please contact Susan Boushell in the Office of Site Remediation Enforcement at 202-564-5107. For further information on any of the attachments, contact Janice Linett in the Office of Site Remediation Enforcement at 202-564-5131.

----- ATTACHMENT -----

ATTACHMENT 1

Superfund and Small Waste Contributors De Micromis Settlements

Have you been contacted regarding your possible involvement with a Superfund site? If you believe you contributed only a minuscule amount of waste to the site, or only household trash, you should learn about "de micromis settlements."

This pamphlet describes what Superfund is, what de micromis means, and why a Superfund de micromis settlement may be to your advantage.

U.S. Environmental Protection Agency (EPA)
Office of Enforcement and Compliance Assurance
Office of Site Remediation Enforcement
401 M St., S.W., Washington, D.C. 20460

AM I A "DE MICROMIS" PARTY?

"De micromis" parties can be individuals, small businesses, schools, large companies, or any party who has contributed a minuscule amount of hazardous substances to a Superfund site. At any given site,

the U.S. Environmental Protection Agency's (EPA) Regional office determines who qualifies for a de micromis settlement. Some parties may qualify as de micromis because their sole contribution to a site was a small amount of municipal solid waste. Other parties may qualify as de micromis because they contributed a very small amount of hazardous substances to the site.

As a matter of policy, EPA does not pursue de micromis parties for the costs of cleaning up a site, because their contribution was so small it would be inequitable to require them to make a payment. However, because a de micromis party may be responsible for waste disposed of at a site, other parties at the site may approach them, or even sue them, to recover cleanup costs. De micromis settlements serve to protect de micromis parties from such actions.

HOW MUCH DOES A "DE MICROMIS" SETTLEMENT COST?

If EPA determines that you are eligible for a de micromis settlement, you will not be asked to make any payment to EPA.

WHO IS ELIGIBLE FOR A "DE MICROMIS" SETTLEMENT?

The Superfund statute includes a set of required "findings" that EPA must make in order to determine that a party is eligible for a de micromis settlement. In addition to these few statutory requirements, EPA has significant discretion at each site to determine who qualifies for a de micromis settlement.

In general, the statute requires that, in order to be eligible for a de micromis settlement:

- the amount of waste you contributed to the site must be minimal compared to the other hazardous substances at the site;
- the toxic or other hazardous effects of the waste you contributed must be minimal in comparison to the other hazardous substances at the site; and
- the de micromis settlement must be in the public interest, and involve only a minor portion of the response costs at the site.

Not all parties who meet this description will be eligible for a de micromis settlement. Some small volume contributors, who meet these statutory requirements, are considered de minimis parties, and may be offered a slightly different type of settlement with EPA. The decision

of who qualifies for de minimis and de micromis settlements is made by EPA's Regional Office on a site-specific basis.

WHAT ARE THE BENEFITS OF A "DE MICROMIS" SETTLEMENT?

EPA wants to ensure that de micromis parties are not pursued for the recovery of response costs at a site -- not by EPA or by any other parties associated with the site. De micromis settlements provide this type of protection.

The benefits of a de micromis settlement include:

"Contribution Protection" - This provision offers protection to the de micromis settlor from being sued by other "potentially responsible parties" (PRPs) at the site. Frequently, major waste contributors will sue many small waste contributors to recover their cleanup costs. A de micromis settlement provides protection from such suits that extends to all matters covered by the settlement.

"Covenant Not to Sue" - This provision is a promise that the EPA will not bring any future legal actions against the de micromis party regarding the site and the specific matters named in the settlement.

Taken together, contribution protection, the covenant not to sue, and other de micromis settlement terms provide settlers with a high level of certainty that their responsibilities at the site are fulfilled, and that they are protected from future legal actions related to those matters addressed by the settlement.

WHAT IS SUPERFUND?

Superfund is a federal program, administered by the Environmental Protection Agency (EPA), that is designed to clean up hazardous substances (or "waste") that may pose a threat to human health or the environment. The full name of the law is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Superfund sites are frequently areas or facilities where solvents, sludges, heavy metals, or other wastes have been disposed. In some cases, Superfund sites are old landfills that have received municipal solid waste as well as industrial waste. Sites vary significantly in size -- from a 1/4-acre metal plating shop to a 250-square mile mining complex. Contamination from these sites is often found in the soil, groundwater, and/or nearby streams and lakes.

WHO PAYS FOR CLEANUPS?

When Congress enacted Superfund, it intended to make the "polluters pay" for the costs of cleaning up these sites. The Superfund law holds parties who contributed to the contamination responsible for the costs of cleanup, even if their actions were in accordance with the law at the time of waste disposal.

WHERE CAN I GET MORE INFORMATION?

To find out more about de micromis settlements, and whether you might qualify, contact the nearest Regional U.S. Environmental Protection Agency (EPA) Superfund program office. Ask to speak to the attorney, project manager, or community relations representative assigned to your site. If you do not know where the nearest EPA office is located, call 1-800-424-9346 for assistance.

----- ATTACHMENT -----

ATTACHMENT 2

SAMPLE COVER LETTER FOR DE MICROMIS QUESTIONNAIRE

RE: Questionnaire for [insert site name and location]

Dear [name of potential settling party]:

The United States Environmental Protection Agency (EPA) is currently working to clean up the [insert site name] Site, located in [city, county, state], using the Superfund program. Superfund is a Federal program administered by the EPA that is designed to clean up hazardous substances that may pose a threat to human health or the environment.

EPA is writing to you because [[if recipient has been sued for contribution, insert: "you have been identified as a defendant in a lawsuit entitled [insert case name, court, and civil action number]. In this lawsuit, [insert name of plaintiff] is asking you to contribute to site cleanup costs because you may have sent trash or other material to the site." If recipient has not been sued for contribution, insert applicable facts such as: "you have been contacted by a party associated with this site who may be asking you to contribute to site cleanup costs based on that party's belief that you may have sent trash or other material to the site."]]

In general, EPA does not believe that contributors of minuscule quantities of waste should be required to participate either in financing or performing cleanup efforts at Superfund sites. EPA would like to protect parties that sent minuscule amounts of waste to Superfund sites from lawsuits [such as the one filed against you]. You may be eligible to receive this kind of protection, which can be obtained through a "de micromis" settlement with EPA.

"De micromis" settlements are based on authority EPA has under the Superfund law to reach quick and final settlements with parties whose waste contribution to a site is minimal in volume and toxicity. This authority is found in Section 122(g) of the Superfund law, which is formally known as the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9622(g). If you qualify, a "de micromis" settlement can provide you with protection against legal action by private parties seeking collection of costs they may have incurred in performing or financing cleanup at the site. "De micromis" settlements can also provide you with the assurance that EPA will not pursue you for costs associated with the site.

If you would like EPA to consider whether you might be eligible for this type of settlement, please complete the enclosed questionnaire. The questionnaire is intended to gather information about the nature and quantity of trash or other material that you may have sent to the [insert site name] site. The questionnaire must be completed, signed, and returned no later than [insert date]. This deadline is necessary to reduce legal and administrative costs to EPA. A self-addressed, postage-paid envelope is enclosed. Please keep a copy of the signed questionnaire and any materials you submit with it for your files. If we do not receive the completed and signed questionnaire from you by [insert date], we will assume that you do not wish to be considered for a "de micromis" settlement at this site.

Please keep in mind that this process is entirely voluntary. Please also be assured that you are not obligated to enter into a "de micromis" settlement merely because you return a completed questionnaire. If, after review of your questionnaire, EPA finds that you are eligible for a "de micromis" settlement, EPA will send you a "de micromis" settlement document, which you may choose to sign or not to sign at that time.

Enclosed with this letter is an informational brochure entitled "Superfund and Small Waste Contributors: De Micromis Settlements," which provides additional background information on "de micromis" settlements and may answer some of your questions. If you have any

other questions regarding this letter or the questionnaire, please contact [insert Regional contact's name and telephone number].

Sincerely,

Enclosures:

1) Questionnaire, 2) Self-addressed, postage-paid envelope, and 3) informational "de micromis" brochure

----- ATTACHMENT -----

ATTACHMENT 3

MODEL DE MICROMIS QUESTIONNAIRE

[NOTE: When using the questionnaire, questions may be modified, added, or deleted, as necessary, to reflect known site-specific information. For example, questions may be tailored to the dates of operation of the facility, known haulers or transporters may be identified, and additional questions may be added about sewage sludge.]

[INSERT SITE NAME] QUESTIONNAIRE

This questionnaire is designed to gather information about the trash or other material you may have sent to the [insert site name] Superfund site located in [insert location] and any other involvement you may have had with this site. Your answers to this questionnaire will be used by the United States Environmental Protection Agency (EPA) to determine if you are eligible to participate in a "de micromis" settlement. Please fill out this form as completely and accurately as possible. Your answers should reflect your best recollection of the quantity and types of trash or other material you may have sent to the site and any other involvement you may have had with the site. When answering questions, you may rely on records or other documents, such as receipts, canceled checks, invoices, contracts, etc., as well as on other sources of information, including discussions with others. If your answers do not fit in the spaces provided, you may continue them on additional sheets of paper. Please write your name and the name of the site on the top of any additional sheets of paper and please identify the number of the question that is being continued.

If you have any questions about this form, please call:

[insert Regional contact's name and phone number].

**I. PROMISE THAT QUESTIONNAIRE WILL BE FILLED OUT
TRUTHFULLY AND COMPLETELY**

I, _____ (insert your name), certify
that I am authorized to complete this questionnaire on behalf of
_____ (insert name of party for whom you are
responding, or if you are responding on behalf of yourself as an
individual, insert "self"), and that I am authorized to make the
representations set forth below.

I further certify that I have made a thorough, comprehensive, and
good faith search for all records, documents, or other information in
the possession or control of _____ (insert
name of party for whom you are responding, or if you are responding on
behalf of yourself as an individual, insert "self") to obtain all
information which relates in any way to the ownership or operation of
the [insert site name and location] ("the site") or to the ownership,
operation, transportation, treatment, storage, and/or disposal of trash
or other material at the site, including having discussions with persons
who have or may have knowledge about these matters. Based upon my
review of such records, I certify that the answers stated below are
true, accurate, and complete.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION SUBMITTED
IN
RESPONSE TO THIS QUESTIONNAIRE IS TRUE, ACCURATE, AND COMPLETE TO
THE
BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF:**

Signature: _____ Date: _____

Print Name: _____

Title (if any): _____

Address: _____

Telephone (including area code): _____

II. BACKGROUND INFORMATION

A. Identity of Proposed De Micromis Settlor

Name: _____

Address: _____

Telephone (including area code): _____

If you have an attorney representing you for matters relating to this site, please give the following information about your attorney:

Name: _____

Address: _____

Telephone (including area code): _____

B. Do you currently own or control, or have you ever owned or controlled, any of the real property at the site? By own or control we mean hold title, an easement, or a right-of-way through the property, or rent or lease the property. By real property we mean land, buildings, or other fixtures (any items intended to stay attached to the property permanently).

___ yes ___ no

If yes, please explain this ownership or control.

C. Have you ever worked at the site or been involved in the operation of the site in any capacity? ___ yes ___ no

If yes, please describe the work you did, the dates of the work, and

your title, if any.

D. Have you ever hauled or transported to the site trash or other material produced by persons other than yourself?

___ yes ___ no

E. Could any trash or other material that you produced have ended up at the site? ___ yes ___ no

If no, where did your trash or other material go during the years ____ through ____? [NOTE: INSERT YEARS DURING WHICH SITE OPERATED]

F. What is the source of any of your own trash or other material that could have ended up at the site?

1. Single residence? ___ yes ___ no

a. Is there a business or commercial enterprise (for example, dry cleaner, beauty shop, automobile repair, electroplating or furniture repair, etc.) that operates or has operated from this single residence? ___ yes ___ no

If yes, please state the type of enterprise and briefly describe it:

2. Multiple-unit residence (including apartment building, condominium)? ___ yes ___ no

If yes, please state the number of residential units: ____

a. Is there a business or commercial enterprise (for example, dry cleaner, beauty shop, automobile repair, electroplating or furniture repair, etc.) that operates or has operated from this

multiple-unit residence?

___ yes ___ no

If yes, please state the type of enterprise and briefly describe it: _____

3. Business or commercial establishment? ___ yes ___ no

If yes, please state the type of business or commercial establishment and briefly describe it:

4. Governmental entity? ___ yes ___ no

If yes, please state the type of governmental entity:

5. Other (such as school, hospital, non-profit organization)? ___
yes ___ no

If yes, please describe: _____

III. QUESTIONS TO BE ANSWERED BY POTENTIAL SETTLORS WHOSE __OWN__
TRASH
OR OTHER MATERIAL COULD HAVE ENDED UP AT THE SITE

For purposes of this questionnaire, the following definitions apply:

"Household Waste" means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single residences and multiple-unit residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). Household waste is primarily composed of non-hazardous substances (including yard waste, food waste, paper waste, glass and aluminum) and may contain small quantities of household hazardous wastes (including pesticides and solvents).

"Industrial Trash" means any material from a commercial,

institutional, or industrial entity which is very similar to "Household Waste." This term covers only those wastes that are essentially the same as what one would expect to find in common household trash. This term does not include hazardous substances that are derived from a commercial, institutional, or industrial process or activity.

"Sewage Sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

"Other Waste" means hazardous substances that are derived from a commercial, institutional, or industrial process or activity, and any material not covered by any of the other three definitions.

A. What type of trash or other material that you produced could have ended up at the site?

1. Household Waste? ____ yes ____ no

If yes, please describe the type of material that was contained in this Household Waste:

2. Industrial Trash? ____ yes ____ no

If yes, please describe the type of material that was contained in this Industrial Trash:

3. Sewage Sludge? ____ yes ____ no

4. Other Waste? ____ yes ____ no

If yes, please describe this Other Waste: _____

5. If the trash or other material was from a commercial, institutional, and/or industrial process or activity, please describe the process:

-
-
6. If the trash or other material was from a commercial, institutional, and/or industrial process or activity, please describe the type of materials contained in this waste. In particular, please identify all materials that contained hazardous substances. Please attach any Material Safety Data Sheets you may have for these materials, and any other documents showing the contents of these materials:

B. How much of your trash or other material could have ended up at the site?

1. Please estimate the total quantity. Please identify the unit(s) of measurement used in your response, such as pounds, gallons, cubic yards, barrels, bags, Dumpsters:

2. Please estimate the percentage of this total that was Household Waste __%, Industrial Trash __%, Sewage Sludge __%, or Other Waste __%

3. Please estimate how much of the waste or other material contained hazardous substances:

4. How did you arrive at the estimates included in your responses to questions 1, 2 and 3?

C. Please describe the measures, if any, that you took to separate trash or other material containing hazardous substances from other types

of trash or other material, and, if you took such measures, how did you dispose of the hazardous substances:

D. Did you haul or transport the trash or other material to the site yourself?

___ yes ___ no

If yes, please provide the dates during which you did this hauling or transporting:

If no, please state the name, address, and telephone number (if known) of the hauler or transporter. If more than one hauler or transporter was used, please give the names, addresses, and telephone numbers of each and please give the dates each were used:

E. If possible, please estimate the number of times your trash or other material was transported to the site: _____

F. Was any of your trash or other material compacted prior to disposal at the site?

___ yes ___ no

If yes, how did this compaction take place?

If yes, was the quantity of trash or other material you identified in your responses to Question III(B) the quantity before or after compaction? ___ before ___ after

IV. QUESTIONS TO BE ANSWERED BY POTENTIAL SETTLORS WHO HAULED OR TRANSPORTED TO THE SITE TRASH OR OTHER MATERIAL PRODUCED BY OTHER PEOPLE

A. What were the dates during which your hauled or transported to the site? _____

B. How often during those dates did you haul or transport to the site?

C. What type of trash or other material did you haul or transport to the site?

1. Household Waste? ____ yes ____ no
2. Industrial Trash? ____ yes ____ no
3. Sewage Sludge? ____ yes ____ no
4. Other Waste? ____ yes ____ no

If yes, please describe this Other Waste:

D. How much trash or other material did you haul or transport to the site?

1. Please estimate the total quantity. Please identify the unit(s) of measurement used in your response, such as pounds, gallons, cubic yards, barrels, bags, dumpsters:

2. Please estimate the percentage of this total that was Household Waste __%, Industrial Trash __%, Sewage Sludge __%, or Other Waste __%

3. Please estimate how much of the waste or other material contained hazardous substances:

4. How did you arrive at the estimates included in your responses to questions 1, 2 and 3?

E. Please describe the measures, if any, that you took to separate trash or other material containing hazardous substances from other types of trash or other material, and, if you took such measures, how did you dispose of the hazardous substances:

F. Was any of the trash or other material that you hauled or transported to the site compacted prior to disposal?

___ yes ___ no

If yes, how did this compaction take place?

If yes, was the quantity of trash or other material that you identified in your responses to Question IV(D) the quantity before or after compaction? ___ before ___ after

G. Please list the clients for whom you hauled or transported to the site (give names, addresses, and telephone numbers, if known):

V. SOURCES OF INFORMATION

Please check the sources of information you used to fill out this questionnaire (more than one may apply):

- ___ Personal knowledge
- ___ Written records
- ___ Information from other persons

If your responses are based on information from other persons, please give the names, addresses, and telephone numbers of the other persons and a description of the information which they were able to provide:

Please attach copies of any records or other documents you used to fill out this questionnaire. Documents may include items such as receipts, canceled checks, invoices, contracts, or written agreements. Please write your name and the name of the site on the top of each attachment.

[NOTE ON USE OF MODEL: This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.]

----- ATTACHMENT -----

ATTACHMENT 4

SAMPLE COVER LETTER FOR DE MICROMIS SETTLEMENT

RE: De Micromis Settlement at [insert site name and location]

Dear [name of potential settling party]:

Thank you for taking the time to complete the questionnaire concerning your involvement with the [insert site name] Superfund Site. The United States Environmental Protection Agency (EPA) has carefully reviewed your questionnaire and any information that you may have submitted with it. We have used your responses to evaluate the nature and quantity of trash or other material that you may have contributed to this site. We have concluded that you are eligible for a "de micromis" settlement at this site.

A "de micromis" settlement document is enclosed with this letter. This letter will provide you with an explanation of what EPA means by a "de micromis" settlement to assist you in deciding whether to participate. Additional background information on "de micromis"

settlements is provided in the brochure entitled "Superfund and Small Waste Contributors: De Micromis Settlements," which we provided to you with the De Micromis Questionnaire. Please keep in mind that participation in this settlement is entirely voluntary. A decision by you not to take part in this settlement will not be held against you in any way.

As you already know, EPA is currently working to clean up the [insert site name] Superfund site. Superfund is an EPA-administered Federal program that is designed to clean up sites contaminated with hazardous substances that may pose a threat to human health or the environment. EPA does not believe that parties such as yourself who contributed minuscule quantities of waste to a site should be required to participate either in financing or performing Superfund cleanups. [[Insert applicable facts, such as: "Unfortunately, other parties who are potentially liable to EPA based upon their greater involvement with the site have [contacted you] [filed a lawsuit against you] to ask you to contribute to site cleanup costs."]]

Through a "de micromis" settlement with EPA, you can obtain legal protection against lawsuits seeking payment of Superfund cleanup costs or performance of Superfund cleanups. EPA uses "de micromis" settlements to reach quick and final settlements with parties whose waste contribution to a site is extremely minimal in both volume and toxicity. These settlements are based on authority EPA has under Section 122(g) of the Superfund law, which is formally known as the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9622(g).

In exchange for the protection provided by the "de micromis" settlement, EPA asks that you sign the settlement and agree to its terms. The settlement does not require you to pay any money to EPA or to any person who may have liability at the site under the Superfund law (persons who may have such liability are known as "potentially responsible parties"). It requires only that you: 1) certify that you fully and accurately completed the De Micromis Questionnaire; 2) promise not to bring claims relating to the site against the United States; and 3) promise not to bring claims relating to the site against any potentially responsible party at the site. The settlement is not a negotiable document. This will reduce legal and administrative costs to EPA and to you as well, and will lead to equal treatment for all parties who qualify for "de micromis" settlements.

If you would like to participate in the settlement, please complete the signature page of the enclosed settlement and return the

entire agreement in the enclosed envelope. We suggest that you keep a copy of the entire settlement for your files. If we do not receive your signed settlement by [insert date], we will assume that you are not interested in settling at this time.

Thank you for your prompt attention to this matter. If you have any questions, please contact [insert Regional contact's name and phone number].

Sincerely,

Enclosures: 1) "De Micromis" Settlement, 2) Self-addressed, postage-paid envelope

----- ATTACHMENT -----

ATTACHMENT 5

MODEL CERCLA SECTION 122(g)(4) DE MICROMIS ADMINISTRATIVE ORDER ON CONSENT

)
IN THE MATTER OF: _____) U.S. EPA Docket No. ____
[Insert Site Name and Location] _____)
) DE MICROMIS
Proceeding under Section 122(g)(4) _____) ADMINISTRATIVE ORDER
of CERCLA, 42 U.S.C. Section 9622(g)(4)) ON CONSENT
_____)

1. Jurisdiction/Parties Bound. This Administrative Order on Consent ("Consent Order") is issued under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), 42 U.S.C. Section 9622(g)(4). This Consent Order is binding upon the United States Environmental Protection Agency ("EPA") and upon the parties who are identified in Attachment __ who are signatories to this Consent Order ("Settlors"). Settlors do not admit any liability.

2. Purpose. The purpose of this Consent Order is to reach a final "de micromis" settlement with Settlors which: a) resolves Settlors' potential civil liability to the United States under Superfund for payment of response costs and for performance of cleanup at the [insert site name]; and b) protects Settlors from any lawsuits seeking

recovery of Site cleanup costs.

3. Statement of Facts. The [insert site name] ("the Site") is located at [insert address or location] in [city, county, state], and is generally [shown on/described by] the [map/property description] attached to this Consent Order as Attachment __. Under Section 104 of CERCLA, 42 U.S.C. Section 9604, EPA has incurred [approximately \$_____ in] response costs at the Site and [will/may] incur additional costs. EPA currently estimates that total past and future response costs at the Site, including the costs of EPA and CERCLA potentially responsible parties, will be [insert either "\$_____" or "between \$_____ and \$_____" or "in excess of \$_____"]. Each Settlor may have contributed hazardous substances to the Site which are not in excess of [insert number of pounds or gallons] of materials containing hazardous substances [or, stated as a percentage, ____% of the hazardous substances at the Site] and which are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

4. Determinations. EPA determines that: a) in accordance with Section 122(g) of CERCLA, 42 U.S.C. Section 9622(g), it is practicable and in the public interest to reach this final settlement, involving only a minor portion of the response costs at the [insert site name] facility, with Settlers who may be potentially responsible parties who each may have contributed a minimal amount of hazardous substances to the Site, the toxic or other hazardous effects of which are minimal in comparison to other hazardous substances at the Site; and b) Settlers are eligible for a de micromis settlement because they each contributed no more than a minuscule amount of hazardous substances to the Site, an amount which is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site[.] [Insert if applicable: "; and c) total past and projected response costs of the United States at the Site will not exceed \$500,000, excluding interest."]

5. Certification. Each Settlor certifies that to the best of its knowledge it has fully and accurately completed the [insert site name] De Micromis Questionnaire.

6. United States' Covenant Not to Sue. In consideration of Settlers' agreement to this Consent Order, and except as specifically provided in Paragraph 7, the United States covenants not to sue or take administrative action against Settlers under Sections 106 or 107 of CERCLA, 42 U.S.C. Sections 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973, relating to the Site.

7. United States' Reservations of Rights. The United States reserves the right to seek additional relief from any Settlor if: 1) information is discovered indicating that such Settlor's contribution of hazardous substances to the Site is of such greater amount or of such greater toxic or other hazardous effect that it no longer qualifies for settlement under the criteria stated in Paragraph 3; or 2) after Settlor signs the [insert site name] De Micromis Questionnaire, such Settlor becomes an owner or operator of the Site or undertakes any activity with regard to hazardous substances or solid wastes at the Site. The United States also reserves all rights which it may have as to any matter relating in any way to the Site against any person who is not a party to this Consent Order.

8. Settlor's Covenant Not to Sue. Settlor's covenant not to sue and agree not to assert any claims against the United States or its contractors or employees with respect to the Site or this Consent Order. Settlor also covenant not to sue and agree not to assert any claims with respect to the Site against each other or against any other person who is a potentially responsible party under CERCLA at the Site.

9. Contribution Protection. Each Settlor is entitled to protection from contribution claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken and to be taken and all response costs incurred and to be incurred, in connection with the Site, by the United States or by any person who is a potentially responsible party under CERCLA at the Site, except for those limited areas in Paragraph 7 for which the United States has reserved its rights.

10. [NOTE: Insert if total past and projected response costs at the site will exceed \$500,000, excluding interest.] Attorney General Approval. The Attorney General has approved this settlement as required by Section 122(g)(4) of CERCLA, 42 U.S.C. Section 9622(g)(4).

11. Public Comment/Effective Date. This Consent Order is subject to public comment under Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), and is effective on the date that EPA issues written notice that the public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: _____
[Name] [Date]
[Insert Title of Delegated Official]

THE UNDERSIGNED SETTLOR enters in to this Consent Order in the matter of
[insert U.S. EPA docket number], relating to the [insert site name and
location]:

FOR SETTLOR: _____
[Name]

[Address]

By: _____
[Name] [Date]

[NOTE ON USE OF MODEL: This model and any internal procedures adopted
for its implementation and use are intended as guidance for employees of
the U.S. Environmental Protection Agency. They do not constitute
rulemaking by the Agency and may not be relied upon to create a right or
a benefit, substantive or procedural, enforceable at law or in equity,
by any person. The Agency may take action at variance with this model
or its internal implementing procedures.]

----- ATTACHMENT -----

ATTACHMENT 6

MODEL CERCLA SECTION 122(g)(4) DE MICROMIS CONSENT DECREE
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF [_____]]
[_____] DIVISION
(See footnote 1 below)

)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Civil Action No. _____
v.)

) Judge _____
[DEFENDANTS])
)
Defendants.)
_____)

DE MICROMIS CONSENT DECREE
(See footnote 2 below)

A. [NOTE: Insert explanation of procedural posture of the case. To the extent applicable, the following language may be used.] The United States on behalf of the Environmental Protection Agency ("EPA") filed a complaint in this matter under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9607, as amended ("CERCLA" or "Superfund"), to recover costs it has spent for the cleanup of the [insert site name]. The defendants sued by the United States filed contribution actions against third-party defendants, some of whom are Settlers under this Consent Decree. Settlers do not admit any liability.

===== Foot Note =====

- 1 Follow local rules for caption format.
- 2 As a general rule, a judicial consent decree should only be used if the settlor has already been named as a defendant in a contribution action, or if the United States has already initiated CERCLA litigation at the site.

=====

B. The [insert site name] ("the Site") is located at [insert address or location] in [city, county, state], and is generally [shown on/described by] the [map/property description] attached to this Consent Decree as Attachment _____. Under Section 104 of CERCLA, 42 U.S.C. Section 9604, EPA has incurred [approximately \$_____ in] response costs at the Site and [will/may] incur additional costs. EPA currently estimates that total past and future response costs at the Site, including costs of EPA and CERCLA potentially responsible parties, will be [insert either "\$_____" or "between \$_____ and _____" or "in excess of \$_____"]. Each Settlor may have contributed hazardous substances to the Site which are not in excess of [insert number of pounds or gallons] of materials containing hazardous substances [or, stated as a percentage, ____% of the hazardous substances at the Site] and which are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

C. EPA has determined that: 1) in accordance with Section 122(g) of CERCLA, 42 U.S.C. Section 9622(g), it is practicable and in the public interest to reach this final settlement, involving only a minor portion of the response costs at the [insert site name] facility, with Settlers who may be potentially responsible parties who each may have contributed a minimal amount of hazardous substances to the Site, the toxic or other hazardous effects of which are minimal in comparison to other hazardous substances at the Site; and 2) Settlers are eligible for a de micromis settlement because they each contributed no more than a minuscule amount of hazardous substances to the Site, an amount which is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

1. Jurisdiction/Parties Bound. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Sections 1331 and 1345 and 42 U.S.C. Section 9613(b) and also has personal jurisdiction over Settlers. Settlers consent to this Consent Decree and this Court's jurisdiction to enter and enforce this Consent Decree. This Consent Decree is binding upon the United States and upon the parties who are identified in Attachment ___ who are signatories to this Consent Decree ("Settlers").

2. Purpose. The purpose of this Consent Decree is to reach a final de micromis settlement with Settlers, which: a) resolves Settlers' potential civil liability to the United States under Superfund for payment of response costs and for performance of cleanup at the Site; and b) protects Settlers from any lawsuits seeking recovery of Site cleanup costs.

3. Certification. Each Settlor certifies that to the best of its knowledge it has fully and accurately completed the [insert site name] De Micromis Questionnaire.

4. United States' Covenant Not to Sue. In consideration of Settlers' agreement to this Consent Decree, and except as specifically provided in Paragraph 5, the United States covenants not to sue or take administrative action against Settlers under Sections 106 or 107 of CERCLA, 42 U.S.C. Sections 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973, relating to the Site.

5. United States' Reservations of Rights. The United States

reserves the right to seek additional relief from any Settlor: 1) if information is discovered indicating that such Settlor's contribution of hazardous substances to the Site is of such greater amount or of such greater toxic or other hazardous effect that it no longer qualifies for settlement under the criteria stated in Paragraph B; or 2) after signing the [insert site name] De Micromis Questionnaire, such Settlor becomes an owner or operator of the Site or undertakes any activity with regard to hazardous substances or solid wastes at the Site. The United States also reserves all rights which it may have as to any matter relating in any way to the Site against any person who is not a party to this Consent Decree.

6. Settlor's Covenant Not to Sue. Settlers covenant not to sue and agree not to assert any claims against the United States or its contractors or employees with respect to the Site or this Consent Decree. Settlers also covenant not to sue and agree not to assert any claims with respect to the Site against each other or against any other person who is a potentially responsible party under CERCLA at the Site.

7. Contribution Protection. Each Settling Defendant is entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken and all response costs incurred and to be incurred, in connection with the Site, by the United States or by any person who is a potentially responsible party under CERCLA at the Site, except for those limited areas in Paragraph 5 for which the United States has reserved its rights.

8. Public Comment/Effective Date. The United States will lodge this Consent Decree with the Court for a period of not less than 30 days for public notice and comment. Provided that the United States does not withdraw the Consent Decree following such public notice and comment, this Consent Decree shall be effective on the date of entry by this Court.

9. Service. For all matters relating to this Consent Decree, each Settlor will personally receive service of process by mail sent to the name and address provided on the attached signature page, unless such Settlor provides the name and address of an agent for service of process on the attached signature page. Settlers agree to accept service in this manner and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
[insert case name and civil action number], relating to the _____
Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

[Name]
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

[NAME]
United States Attorney
[Address]

[NAME]
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
[insert case name and civil action number], relating to the _____
Superfund Site.

[Name]
Regional Administrator, Region []
U.S. Environmental Protection
Agency
[Address]

[Name]
Assistant Regional Counsel
U.S. Environmental Protection
Agency
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
[insert case name and civil action number], relating to the _____
Superfund Site.

FOR SETTLOR [_____]

Date: _____
[Name and address of Settlor or
Settlor's signatory]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address:

[NOTE ON USE OF MODEL: This model and any internal procedures adopted
for its implementation and use are intended as guidance for employees of
the U.S. Environmental Protection Agency and U.S. Department of Justice.
They do not constitute rulemaking by the Agency or Department and may
not be relied upon to create a right or a benefit, substantive or

procedural, enforceable at law or in equity, by any person. The Agency or Department may take action at variance with this model or its internal implementing procedures.]

----- ATTACHMENT -----

ATTACHMENT 7

MODEL CERCLA SECTION 122(i) DE MICROMIS FEDERAL REGISTER NOTICE

Proper format is very important for a Federal Register notice. The format is shown in the following model. The notice should be typed on plain bond paper, not EPA letterhead stationery. Each page, including the first, should be consecutively numbered. The notice should be double-spaced and single-sided. Heading titles may not be varied. The official format requires the top, bottom and right margins to be one inch wide and the left margin to be one and a half inches wide, but minor variations in margin size will not result in rejection of the notice. Legal citations should be written as, e.g., 42 U.S.C. 9622(i) (do not include a section symbol [Section] or the word "section.") The notice should be signed by a Regional official authorized to submit documents for publication in the Federal Register by EPA Delegation 1-21. The name and title of the official signing the notice should be typed on the notice. If an acting official will be signing for the authorized official, the acting official's name and the acting official's title, e.g., "Acting Regional Administrator," must be typed on the notice. The billing code should be typed or hand-written at the end of the notice below the Regional official's signature.

To publish the notice, the Region should send 1) the original signed notice, 2) three single-sided copies of the signed notice, 3) a disk containing the file for the notice, and 4) a completed Federal Register Typesetting Request (EPA Form 2340-15) to: Vickie Reed, Federal Register Liaison (Mail Code 2136), Regulation Development Branch, Regulatory Management Division, Office of Regulatory Management and Evaluation, Office of Policy, Planning and Evaluation, EPA Headquarters, 401 M St., S.W., Washington, D.C., 20460. When filling out the Federal Register Typesetting Request, publication costs should be billed to the site-specific Superfund account number. The formula for calculating publication costs on the Typesetting Request is as follows: two double-spaced pages equals one column, and one column costs \$100.00 (half pages and half columns should be rounded up; if a disk is not provided, the per column cost increases to \$125.00).

Questions about these procedures should be directed to Vickie Reed at (202) 260-7204.

[NOTE ON USE OF MODEL: This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.]

ENVIRONMENTAL PROTECTION AGENCY

[] [NOTE: Leave brackets to left blank.]

Proposed CERCLA Administrative De Micromis Settlement; [Insert name of settling party, or if there are multiple settling parties, insert site name -- capitalize first letter of each word]

AGENCY: Environmental Protection Agency

ACTION: Notice; request for public comment

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative de micromis settlement concerning the [insert site name] site in [insert site location] with the following settling party(ies): [insert names here or reference list included in Supplementary Information portion of notice]. The settlement is designed to resolve fully [the/each] settling party's liability at the site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at [insert address of information repository at or near site] and [insert address of Regional public docket]. Commenters may request an opportunity for a public meeting in the affected area in accordance

with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). DATES: Comments must be submitted on or before [insert 30 days from date of publication]. [NOTE: Do not fill in date; just type DATES sentence, including bracketed portion, exactly as it appears here.]

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at [insert address of Regional public docket or other Regional office location]. A copy of the proposed settlement may be obtained from [insert name, address, and telephone number of Regional docket clerk or other Regional representative]. Comments should reference the [insert site name, location] and EPA Docket No. _____ [insert EPA docket number for settlement] and should be addressed to [insert name and address of Regional docket clerk or other Regional representative designated to receive comments].

FOR FURTHER INFORMATION CONTACT: [Insert name, address, and telephone number of Regional representative who has knowledge of settlement].

SUPPLEMENTARY INFORMATION: [Use this optional section to, e.g., list parties too numerous to list in Summary portion of notice or to provide further details about settlement].

[Insert typed name and
title of Regional official]

Date

[Insert billing code]